

STATE OF MAINE

SUPREME JUDICIAL COURT

Docket No. Bar-01-8

BOARD OF OVERSEERS OF THE BAR

Petitioner

v.

ORDER

BRIAN E. SWALES

Respondent

This matter is before the Court pursuant to M. Bar R. 7.2(b)(1) and (2). The Board filed an Information against the Respondent, Brian E. Swales, an attorney with an office in Houlton, alleging that Swales engaged in violations of M. Bar R. 2(c); 3.1(a); 3.2(f)(2), (3), (4); 3.4(b); 3.4(c); 3.4(d)(1); 3.6(a)(2), (3); 3.6(e)(2)(iv); 3.6(h)(1); 3.7(d); and 3.7(e)(1)(i). Bar Counsel J. Scott Davis represented the Board and Mr. Swales was represented by Stephen Y. Hodsdon, Esq. A hearing was held at which time the Court heard testimony from the complaining witnesses and Mr. Swales. In his pretrial memorandum, Mr. Swales admitted that he violated the Code of Professional Conduct in regard to his representation of Magnar Ramjor; that he was occasionally improperly uncommunicative with clients; and that he was too often tardy for court thereby admitting that he engaged in “conduct unworthy of an attorney” within the meaning of M. Bar R. 3.1(a). During the course of the hearing, the Court heard testimony from Suzanne Russell Lilley, an Assistant District Attorney, which testimony the Court found to be a credible description of numerous incidents of Mr. Swales’ conduct in District Court. Mr. Swales admits

he has been lax, negligent, and indicative of his failure to “focus attention on what he needed to focus upon.” Mr. Swales further admitted that he allowed minors to consume alcohol in his home.

The Court finds that the evidence clearly supports Mr. Swales’ violation of M. Bar R. 3.2(f)(2) by engaging in illegal conduct that adversely reflects on the lawyer’s honesty, trustworthiness, or fitness as a lawyer in other respects; that he violated M. Bar R. 3.2(f)(4) by engaging in conduct that is prejudicial to the administration of justice; that he violated M. Bar R. 3.4(b) & (c) by representing parties with conflicts of interest; that he violated M. Bar R. 3.6(2) & (3) by handling legal matters without preparation adequate in the circumstances and by neglecting legal matters entrusted to him; and that he violated M. Bar R. 3.6(e)(2)(iv) by mishandling client funds.

By his admissions, Mr. Swales evidences that he now recognizes that his actions demonstrate numerous instances of unprofessional conduct. The Court has considered the purpose of this bar disciplinary proceeding in imposing a sanction in this case. Having found these violations of the Maine Bar Rules, and agreeing with the parties that they are serious, the Court must now consider an appropriate sanction. It is well established that the main purpose of attorney discipline is not punishment, but protection of the public. In addition, in imposing discipline, the Court should not only examine the facts of the case at bar, but also the prior record and experience of the attorney involved. Taken individually, Mr. Swales’ failings would warrant reprimands. The number and nature of the incidents of his unprofessional conduct demands a more serious sanction and conditions upon his continued practice as a lawyer.

Accordingly, the Court HEREBY ORDERS that Brian E. Swales be and hereby is suspended from the practice of law in Maine for a period of one (1) year commencing June 1, 2002, with that suspension itself being suspended for one year subject to the following terms and conditions:

1. The Court appoints Robert F. Ward, Esq. as Monitor for Mr. Swales for a period of one year commencing June 1, 2002, unless terminated earlier as herein provided or by other order of this Court;

2. Mr. Ward shall review Mr. Swales' office procedures and help Mr. Swales establish appropriate procedures for the handling of client funds, the calendaring of appointments to insure Mr. Swales prompt attention to client matters, and prompt attendance for scheduled court matters;

3. During the period of supervision, Mr. Ward shall receive monthly written reports from Mr. Swales concerning the current status of matters in which he has been retained to act as counsel;

4. Mr. Ward is a volunteer who shall receive no compensation and who shall be expected to incur no expense;

5. Mr. Swales will meet with Mr. Ward within ten (10) days of the date of this Order and thereafter at the call and convenience of Mr. Ward on a monthly basis, unless Mr. Ward should determine more frequent meetings are appropriate;

6. Mr. Ward shall have the right to withdraw and terminate his service at any time for any reason he deems sufficient, including for reasons set forth in paragraph seven below. In the event of a withdrawal, he shall notify the Court and Bar Counsel, and Mr.

Swales shall then cooperate to obtain the services of an alternate Monitor to complete the remainder of the original Monitor's term;

7. If any aspect of the monitoring procedure creates a situation, which is, or might be interpreted to be a conflict of interest under the Maine Bar Rules (for example, if Mr. Swales is or becomes opposing counsel concerning a matter involving Mr. Ward), then Mr. Ward may adopt any one of the following courses with the proposed result:

I. Mr. Ward shall cease to act as such and a potential conflict is avoided;

II. Mr. Ward shall continue as Monitor but totally exclude Mr. Swales' client and matter in question from the monitoring process, so that no conflict is deemed to exist;

III. Mr. Ward shall continue as Monitor, and obligate his firm to withdraw from the conflicting matter; or

IV. Mr. Ward shall continue as Monitor, and obligate Mr. Swales not to participate in the matter and to obtain new counsel for his client(s).

8. If, in Mr. Ward's judgment, it is appropriate, he shall have the right to contact clerks of court, judges, or opposing counsel to determine the accuracy of Mr. Swales' reports to him;

9. Mr. Ward shall have no contact with any of Mr. Swales' clients and his only contact in the performance of his duties shall be with Mr. Swales or other persons contemplated by this Order. Mr. Ward's participation in the monitoring of Mr. Swales'

practice shall be deemed not to create an attorney-client relationship between Mr. Ward and Mr. Swales or between Mr. Ward and Mr. Swales' clients;

10. Mr. Ward shall file a confidential report with the Court on or before July 15, 2002, and quarterly thereafter or sooner if Mr. Ward deems it necessary, with copies to Mr. Swales and Bar Counsel concerning any professional assistance Mr. Ward has provided to Mr. Swales;

11. Mr. Ward will have the duty to report to Bar Counsel and to the Court any apparent or actual professional misconduct by Mr. Swales of which Mr. Ward becomes aware or lack of cooperation by Mr. Swales in the performance of this Order;

12. In the event a grievance complaint is received by Bar Counsel concerning alleged conduct occurring on this date or thereafter, such complaint shall be processed under either Bar Rule 7.1(c) or 7.1(d), as appropriate, but in the event a preliminary review panel finds probable cause of misconduct under Bar Rule 7.1(d)(5), the matter shall then be filed directly before the Court under Bar Rule 7.2(b); and

13. Any apparent violation of the conditions of this Order shall be filed by Bar Counsel directly with the Court.

It is further ORDERED that Mr. Swales reimburse the Board of Overseers of the Bar for its out-of-pocket expenses incurred for the prosecution of these proceedings to be paid within thirty (30) days of the date upon which Bar Counsel shall have notified Mr. Swales of the amount of those expenses.

Dated: May 21, 2002

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Paul L. Rudman  
Associate Justice